

**TERRELL MARSHALL LAW
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SCOTT BORECKI, individually and on
behalf of all others similarly situated,**

Plaintiff,

v.

**RAYMOURS FURNITURE COMPANY,
INC., d/b/a RAYMOUR & FLANIGAN,**

Defendant.

NO. 1:17-cv-01188 (LAK) (SN)

**NOTICE OF PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT, CONDITIONAL CERTIFICATION
OF THE SETTLEMENT CLASS, APPOINTMENT OF PLAINTIFF'S COUNSEL AS
CLASS COUNSEL, AND APPROVAL OF PLAINTIFF'S PROPOSED NOTICE OF
SETTLEMENT AND CLASS ACTION SETTLEMENT PROCEDURE**

For the reasons set forth in the Memorandum of Law in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiff's Counsel as Class Counsel, and Approval of Plaintiff's Proposed Notice of Settlement and Class Action Settlement Procedure ("Motion for Preliminary Approval") and in the Declaration of Beth E. Terrell ("Terrell Declaration") and Declaration of Joseph A. Fitapelli ("Fitapelli Declaration") in Support of Plaintiff's Motion for Preliminary Approval and based on the pleadings and proceedings heretofore had herein, Plaintiff respectfully move the Court, before the Hon. Sarah Netburn, United States Magistrate Judge, in the United States District Court

for the Southern District of New York, 40 Foley Square, Courtroom 219, New York, NY 10007, on a return date to be set by the Court, to enter an Order:

(1) granting preliminary approval of the Class Action Settlement Agreement and Release (“Settlement Agreement”), attached as **Exhibit A** to the Terrell Declaration;

(2) conditionally certifying the following settlement class under Fed. R. Civ. P. 23(a) and (b)(3) for purposes of effectuating the settlement:

All persons in the United States who between February 2, 2016 and March 22, 2017 received a Text Message from Defendant or any third party acting on behalf and for whom Plaintiff alleges Defendant did not have prior written express consent to send Text Messages, including all persons who could claim to have suffered any injury or could assert any claims as a result of sending or receipt of Text Messages to the mobile telephone numbers listed on Exhibit 7 to the Settlement Agreement between February 2, 2016 and March 22, 2017.

(3) appointing Terrell Marshall Law Group and Fitapelli & Schaffer, LLP as Class Counsel;

(4) approving Plaintiff’s Notice of Class Action Lawsuit Settlement and Fairness Hearing, attached as **Exhibits 1-4** to the Settlement Agreement;

(5) granting preliminary approval of the retention of Rust Consulting to administer the settlement process and distribute the Notices of Class Action Lawsuit Settlement and Fairness Hearing;

(6) approving Plaintiff’s proposed schedule for final settlement approval; and

(7) granting such other, further, or different relief as the Court deems just and proper.

Plaintiff has contemporaneously submitted a Proposed Order, attached as **Exhibit 6** to the Settlement Agreement, for the Court’s convenience.

RESPECTFULLY SUBMITTED AND DATED this 13th day of September, 2018.

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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on September 13, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Defendant

DATED this 13th day of September, 2018.

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